

OFFICE OF MANAGEMENT AND BUDGET  
ROUTE SLIP

TO \_\_\_\_\_  
Cy Alba - State  
\_\_\_\_\_  
Art Schissel - Treasury  
\_\_\_\_\_  
Bob Rabben - DOD  
\_\_\_\_\_  
Lindy Knapp - DOT  
\_\_\_\_\_  
 CIA  
\_\_\_\_\_

Take necessary action ☐  
Approval or signature ☐  
Comment ☐  
Prepare reply ☐  
Discuss with me ☐  
For your information ☐  
See remarks below ☐

FROM \_\_\_\_\_  
Bob Carlstrom

DATE 3/30/78

REMARKS

Employee Discipline and Federal Tort Claims  
Act Amendments

Attached is a revision of earlier proposed  
amendments previously sent you. If you  
have comments, please provide them to  
me by 4:00 p.m., Friday, March 31, 1978.

**SPECIAL  
SERVICE**

Title 5, United States Code, is amended by adding a new chapter 78 containing new sections 7801, 7802, 7803, 7804, 7805, and 7806 as follows:

"Section 7801. Definitions

For the purposes of this chapter:

(1) "Person" means any natural person subject to the Constitution of the United States.

(2) "Federal agency" means a Federal agency, as defined in section 2671 of title 28, United States Code, which employs or employed an "employee" defined in subsection (3) of this section;

(3) "Employee", unless otherwise described, means a present "employee of the Government" as defined in section 2671 of title 28, United States Code;

(4) "Disciplinary Action" means removal, suspension without pay, demotion, admonishment or reprimand for such cause as will promote the efficiency of the service.

Section 7802. Administrative inquiries

(a)(1) Where a claim filed by a person under section 2675 of title 28, United States Code, arising under the Constitution of the United States, results in an administrative award, compromise or settlement paid by the United States, such person within 30 days of execution of the award, compromise or settlement, may request the head of the Federal agency or his designee to initiate an administrative inquiry of the acts of the employee which gave rise to the claim, as provided by subsection (b)(1) of this section.

(a) (2) Where a civil action brought in any court by a person under section 1346(b) of title 28, United States Code, on a claim arising under the Constitution of the United States, results in a judgment against the United States, or a settlement or compromise executed by the United States, such person within 30 days after time for appeal of the judgment has expired, or within 30 days after execution of the settlement or compromise, may request the head of the Federal agency or his designee to initiate an administrative inquiry of the acts of the employee which gave rise to the claim, as provided by subsection (b) (1) of this section.

(b) Within 60 days of the effective date of the regulations described in section 7805 of this chapter, the head of each Federal agency to which such regulations are applicable shall issue rules, regulations, and instructions ~~authorizing a person who has satisfied the requirements of~~ ~~for administrative inquiry to participate in the~~ ~~subsections (a) (1) and (a) (2) of this section to initiate an~~ ~~administrative inquiry into~~ an employee's conduct upon a submission in writing of a request for such inquiry based upon the claim arising under the Constitution of the United States described in subsections (a) (1) and (a) (2) of this section, ~~and to:~~

*Such person who has satisfied the requirements of (a) (1) or (a) (2) of this section*  
(c) (1) participate by submitting a statement, and if a hearing is held by giving testimony, pursuant to such rules, regulations, and instructions, and receive a notification of the action taken on such request or inquiry and the reasons

(2) within 30 days from notification of the action of the Federal agency, appeal its action (A) to the Secretary of Defense or his designee if the employee is a uniformed member of the Armed Forces as described in section 101(4) of title 10 of the United States Code, (B) to the Secretary of the Department in which the United States Coast Guard is operating or his designee if the employee is a member of the Coast Guard, (C) to the head of an agency or his designee with a personnel system under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.) if the employee is an employee of the Foreign Service, (D) to a reviewing agency designated by the President if the employee is engaged in intelligence activities and the reviewing agency assumes jurisdiction over the proceeding, or (E) to the Civil Service Commission in any other case. Such appeal process shall include de novo review of the claims pursuant to regulations issued under section 7805 of this chapter, and the issuance of a final decision including a statement of reasons, and recommendation of disciplinary action if any.

Section 7803. Former employees; present and former Presidential appointees.

With respect to a claim against a former employee or a present or former appointee of the President, a person who has met the requirements of § 7802(a) of this chapter shall be entitled to request an administrative inquiry based upon his claim described in subsection (a)(1) and (a)(2) of

if the former employee or present or former Presidential appointee is a uniformed member of the Armed Forces as described in section 101(4) of title 10 of the United States Code, (B) the Secretary of the Department in which the United States Coast Guard is operating if the former employee or present or former Presidential appointee is a member of the Coast Guard, (C) the head of an agency with a personnel system under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.) if the former employee or present or former Presidential appointee is an employee of the foreign service, (D) to a reviewing agency designated by the President if the former employee or present or former Presidential appointee is engaged in intelligence activities and the reviewing agency assumes jurisdiction over the proceeding, or (E) the Civil Service Commission in any other case. Such inquiries shall result in the issuance of a public report.

Section 7804. Judicial Review

A person who has obtained a final decision as provided by subsection (b)(2) of the section 7802 of this chapter may within 30 days thereof petition for its review in a district court of the United States which may set aside the decision and remand for further proceedings if it is found to be arbitrary and capricious based upon a review of the decision, statement of reasons, and recommended disciplinary action if any, issued pursuant to subsection (b)(2) of section 7802 of this chapter. Any review of a final decision will be held in camera if the decision involves matters specifically protected

from disclosure by statute or executive order or the District Court determines that in camera review is in the interests of national security.

Section 7805. Regulations

(a) Except as otherwise provided in this chapter, the Civil Service Commission with the approval of the Attorney General, within 90 days of enactment of this chapter, shall issue such regulations as it deems necessary and appropriate for the implementation of sections 7802-7804 of this chapter. The head of each Federal agency subject to the administrative review provisions of subsection 7802(b)(2)(E) of this chapter shall comply with such regulations and shall issue rules, regulations and instructions not inconsistent therewith.

(b) The Secretary of Defense, within 90 days of enactment of this chapter, shall issue such regulations as he deems necessary and appropriate for the implementation of sections 7802-7803 of this chapter. The head of each Federal agency which is enumerated in section 101(4) of title 10 of the United States Code shall, with respect to such uniformed members of the Armed Forces, comply with such regulations and shall issue rules, regulations, and instructions not inconsistent therewith.

(c) The reviewing agency designated by the President for reviewing the conduct of employees or officers engaged in intelligence activities shall issue such regulations as it deems necessary and appropriate for the implementation of sections 7802-7804 of this chapter. The head of each

Federal agency having employees or officers engaged in intelligence activities shall comply with such regulations and shall issue rules, regulations and instructions not inconsistent therewith.

(d) The Secretary of the Department in which the United States Coast Guard is operating shall issue such regulations as are necessary and appropriate for the implementation of sections 7802-7804 of this chapter.

(e) The head of the agency with a personnel system under the Foreign Service Act of 1946, as amended, shall issue such regulations as are necessary and appropriate for the implementation of sections 7802-7804 of this chapter.

Section 7806. Miscellaneous

(a) Nothing in this chapter shall affect the rights of an employee to appeal or to seek review or other means of redress of any disciplinary action taken against him which he would have under other provisions of law. However, an employee, who was the subject of a disciplinary action recommended by the Civil Service Commission pursuant to subsection 7802(b), shall not be required by any other provision of law to appeal an agency disciplinary action to the Commission prior to seeking any judicial review of that action.

(b) If an employee is not entitled under other provisions of law to seek administrative or judicial review of any disciplinary action taken against him, he may in the event a complainant seeks administrative review provided by section 7802(b)(2) of this chapter, participate in such review and give evidence or testimony if a hearing is held, and to the extent provided by section 7804 of this chapter petition for judicial review of a final decision if any disciplinary action recommended under subsection 7802(b)(2) of this chapter is greater than that determined by the employing Federal agency under subsection 7801(b)(1).

(c) Nothing in this chapter shall affect the availability of defenses which an employee may raise in any administrative or judicial proceeding.

(d) Nothing in this chapter shall require a Federal agency to delay its disciplining of an employee, or empower the Civil Service Commission to reduce the severity of disciplinary action imposed by an agency against an employee who would not have a right to seek the Civil Service Commission's review of such action under other provisions of law.

7807 Notwithstanding any other provision of this Act, this title shall not apply to any claim or suit arising <sup>under the Constitution for</sup> tortious conduct which occurred prior to the passage of this Act.